

REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

After entry of the foregoing amendment, Claims 1-3, 20, 27, 28, 34, and 65-73 are pending in the present application. Claims 4-12, 18, 19, 21-26, 29-33, 35, 38-47, 51-53, and 55-64 have been canceled without prejudice or disclaimer. Claims 1-3, 20, 27, 28, and 34 have been amended to incorporate canceled subject matter, and, to re-cast the claims such that they are directed to the electrode configuration described in the specification. Specifically, Applicant's amendments find support at least at Figure 1 of the specification and the corresponding description therein. In this regard, Applicants expressly withdraw all earlier representations made with respect to language no longer appearing in the claims and note that all art of record should be re-visited in view of the new claim language.<sup>1</sup> No new matter is added.

By way of summary, the Official Action presents the following issues: Claims 1-12, 18-33, 35, 41-44, and 55-64 stand rejected under 35 U.S.C. § 102 as being unpatentable over Mathis et al. (U.S. Patent 6,643,546, hereinafter “Mathis”); and Claims 34, 38-40, 45-47, and 51-53 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mathis.

Applicant thanks the Examiner for the courtesy of the interview extended to Applicant's representative on August 1, 2007. During the interview, Applicant's representative explained the changes to the claims as they relate to the art of record. However, no agreement was reached pending a response as filed. Comments presented during the interview are reiterated below.

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<sup>1</sup> See Hakim v. Canon Advent Group (Fed. Cir. 2007).

REJECTION UNDER 35 U.S.C. § 102

The Official Action has rejected Claims 1-12, 18-33, 35, 41-44, and 55-64 under 35 U.S.C. § 102 as being unpatentable over Mathis. The Official Action contends that Mathis describes all of the Applicant's claimed features. Applicant respectfully traverses the rejection.

Applicant's amended Claim 1 recites, *inter alia*, a method of configuring signaling locations within a heart to monitor hemodynamic performance, including:

positioning signaling electrodes along a first and second axis interior to the heart, the second axis being within or around the left ventricle and being substantially horizontal with respect to the first axis, the first axis spanning anterior and posterior extremes of a right ventricular septum of the heart, the first axis being longer than the second axis; . . .

delivering, in response to a certain received signal, stimulation via the signaling electrodes in at least one of the interventricular septum, a coronary vein of the left ventricle, and the epicardial wall of the left ventricle. (emphasis added)

Mathis describes a multi-electrode lead (14) which is shown throughout Figures 8-11 in various configurations within a right ventricle of the heart. The lead is shown having a folded, coiled or spiral configuration.<sup>2</sup> As can be appreciated, the multi-electrode lead is delivered via a catheter placed in a vertical fashion with all the corresponding electrodes within the right ventricle.

Conversely, in an exemplary embodiment of the Applicant's claimed advancements, a method of configuring signal locations within a heart to monitor hemodynamic performance is provided. Signaling electrodes are positioned along a first and second axis interior to the heart. The second axis is within or around the left ventricle and is substantially horizontal with respect to the first axis. The first axis spans anterior and posterior extremes of a right ventricle septum of the heart. The first axis is longer than the second axis. Electrical signals

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<sup>2</sup> See Mathis at Figures 8-11.

are received from the signaling electrodes and, are indicative of hemodynamic performance. A stimulation is delivered in response to a certain received signal via the signaling electrodes in at least one of the interventricular septum, a coronary vein of the left ventricle, and the epicardial wall of the left ventricle.

As Mathis merely describes electrode placement in a right ventricle, it does not disclose or suggest the specific configuration recited in Applicant's amended claims. Accordingly, Applicant respectfully requests that the rejection of the pending claims under 35 U.S.C. § 102 be withdrawn.

#### REJECTION UNDER 35 U.S.C. § 103

The Official Action has rejected Claims 34, 38-40, 45-47, and 51-53 under 35 U.S.C. § 103 as being unpatentable over Mathis. The Official Action contends that Mathis discloses or suggests all of the features of the Applicant's claims. Applicant respectfully traverses the rejection.

As noted above, Mathis does not disclose all of the elements of the amended claims. As such, Applicant respectfully submits that a *prima facie* case of obviousness has not been presented. Accordingly, Applicant respectfully requests that the rejection of the pending claims under 35 U.S.C. § 103 be withdrawn.

#### NEW CLAIMS

New Claims 65-73 are presented to recite more detailed aspects of the Applicant's claimed advancements. Applicant respectfully submits that these more detailed aspects of the Applicant's claimed advancements are neither disclosed nor suggested by the art of record.

CONCLUSION

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present application, including Claims 1-3, 20, 27, 28, 34, and 65-73 are patentably distinguished over the prior art, in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

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